

SENATE BILL 1611

By Norris

AN ACT to amend Tennessee Code Annotated, Section 12-8-101, relative to the sale and production of stone products and hot mix asphalt by governmental entities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-8-101 is amended by deleting the section in its entirety and substituting instead the following:

12-8-101.

(a) Notwithstanding any other provision of law to the contrary local governments of the state of Tennessee may, individually or jointly, own or operate any plant or facility for the manufacture or production of hot mix asphalt provided that the local government(s) can satisfactorily demonstrate a documented need for the facility and an analysis of costs and benefits, including:

(1) Bid records proving that the local government or governments have not received multiple competitive bids for paving or hot mix asphalt purchase for a number of years;

(2) A comparison of the prices from nearby local governments showing higher costs than are paid by local governments that receive multiple competitive bids;

(3) An estimated need for paving or hot mix asphalt for fifteen (15) years to show that the local government(s) would produce the volume necessary to realize a cost savings by owning or operating a plant or facility;

(4) Accurate production cost estimates, including debt service/depreciation on the asphalt plant and necessary ancillary equipment and all other fixed and variable plant operating costs;

(5) Agreements with suppliers of the necessary raw materials that those suppliers will sell materials to the local government(s) at competitive prices, and the locations of those suppliers;

(6) Cost estimates for transporting raw materials to the plant;

(7) Estimates of the total operating costs for the plant, including any costs that will be absorbed in the current operating budget, any new costs to the local government(s), and an explanation of how costs that are absorbed will be avoided;

(8) estimates of the plant's impact on the local economy and state and local tax revenues, including sales and use tax, local option sales tax, and mineral severance tax.

(b) For the purpose of this section, the term "local government" is defined to include any county or municipality of the state of Tennessee, including, but not limited to, metropolitan and consolidated forms of government.

(c) After the information required by subsection (a) has been compiled, the chief administrative officer of the highway, street, public works or other department having discretion and control over the construction and maintenance of streets, highways and roads shall submit such information to the governing body of the local government and shall submit a recommendation for or against the owning or operating of a plant or facility for the manufacture or production of hot mix asphalt. If the facility is to be owned or operated by multiple local governments jointly, the proposal and supporting documentation shall be submitted to the governing body of each such local government.

The governing body shall closely examine the feasibility of any proposal submitted to it by the appropriate department and shall approve or deny the action in a separate resolution or ordinance before the local government expends any public funds for this purpose.

(d) Any unit of local government owning or operating any plant or facility for the manufacture or production of hot mix asphalt shall comply with the provisions of any state rule, regulation or standard for the quality of asphalt used in the construction of roads, streets or highways.

(e) Nothing in this section shall prohibit the state or any political subdivision thereof, inclusive of counties and municipalities, from expanding, replacing, altering or continuing any plant or facility for the manufacture or production of hot mix asphalt in existence on March 29, 1976. Neither shall this section be construed as limiting the authority of a metropolitan government with a population in excess of five hundred thousand (500,000) according to the 2000 federal census or any subsequent federal census from owning or operating a plant or facility for the production or manufacture of hot mix asphalt.

(f) For any local government owning or operating a facility or plant for the production or manufacture of asphalt pursuant to the authority granted by this section, the comptroller of the treasury shall conduct a performance audit of such facility regularly on a time interval to be determined by the comptroller.

(g) It is unlawful for crushed limestone, commercial lime, agricultural lime, gravel, or any other product resulting from the processing of stone which is produced in whole or in part by any state, county or municipally owned or operated plant, quarry, crusher, or stone processing plant to be sold, traded, bartered, loaned or given away to a private individual, corporation, partnership or sole proprietorship. Nothing in this subsection

shall be construed to prohibit the sale, transfer or loan of such products to the state or any local governments or departments or agencies of local governments, providing that just compensation is received for the materials.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.